UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 02-10446-RWZ

THE GIVING BACK FUND, INC.

v.

MARK STEVERSON, RUDOLPH & BEER, L.L.P., LAURENCE H. RUDOLPH and CORRINA BIGGAR

MEMORANDUM OF DECISION

July 12, 2002

ZOBEL, D.J.

According to the Complaint, defendant Mark Steverson ("Steverson") breached his fiduciary duty to plaintiff, The Giving Back Fund, Inc. ("GBF"), while acting as a member of its Board of Directors, when he interfered with GBF's business relationship with two of its celebrity clients. The Complaint further charges defendant Corrina Biggar ("Biggar"), a former GBF employee, with breaching her duties to GBF, and the remaining defendants, Rudolph & Beer, L.L.P. ("R&B"), plaintiff's employer, and Laurence H. Rudolph ("Rudolph"), plaintiff's superior, with aiding and abetting Steverson's and Biggar's tortious conduct. Specifically, the Complaint alleges Breach of Fiduciary Duty by Steverson (Count I), Vicarious Liability for Breach of Fiduciary Duty against R&B and Rudolph (Counts II and III), Aiding and Abetting the Breach of Fiduciary Duty against R&B and Rudolph (Count IV), Breach of Fiduciary Duty against Biggar (Count V), Aiding and Abetting Biggar's Breach of Fiduciary Duty against R&B and Rudolph, and Interference with Contractual Relationships against all defendants (Counts VII and VIII). Defendants have moved to dismiss all counts on the grounds

that, pursuant to Federal Rule of Civil Procedure ("Rule") 12(b)(2), this Court lacks personal jurisdiction, and pursuant to Rule 12(b)(6), the complaint fails to state a claim. Both arguments lack merit.

Along with the Complaint, plaintiff has submitted supplementary documentation that establishes a prima facie case of personal jurisdiction, consistent with plaintiff's burden of proof. See U.S.S. Yachts, Inc. v. Ocean Yachts, Inc., 849 F.2d 9, 11 (1st Cir. 1990)(when defendant challenges jurisdiction, the burden is on plaintiff to prove otherwise); Chlebda v. H.E. Fortna & Brother, Inc., 609 F.2d 1022, 1024 (1st Cir. 1979)(plaintiff must go beyond pleadings and submit affirmative proof of personal jurisdiction over defendants). A District Court may exercise authority over a defendant by virtue of either general or specific jurisdiction. Mass. S

ch. of Law at Andover, Inc. v. Am. Bar Ass'n, 142 F.3d 26, 34 (1st Cir. 1998). Because the plaintiff does not seem to contend, nor does the record support, that defendants engaged in "continuous and systematic general business contacts" with Massachusetts, as required for purposes of general jurisdiction, see Phillips Exeter Acad. v. Howard Phillips Fund, Inc., 196 F.3d 284, 288 (1st Cir. 1999), the relevant inquiry then turns on this Court's specific jurisdiction.

Specific jurisdiction exists when there is a "demonstrable nexus between a plaintiff's claims and a defendant's forum-based activities." Mass. Sch. of Law at Andover, 142 F.3d at 34. This determination requires a two-part inquiry: first, the contacts must satisfy the Massachusetts statutory requirements set forth in M.G.L. c. 223A, § 3, and second, a decision to exercise personal jurisdiction over defendants

must comport with basic requirements of due process mandated by the United States Constitution. Bond Leather Co, Inc. v. Q.T. Shoe MFG. Co., Inc., 764 F.2d 928, 931 (1st Cir. 1985). For the purpose of both inquiries, the Court must focus on the specific contacts between defendants and Massachusetts.

Despite counsel's declaration at oral argument to the contrary, the First Circuit recognizes that, for purposes of personal jurisdiction, the contacts of an attorney are attributable to his or her firm in accordance with the elemental principles of agency. See Sawtelle v. Farrell, 70 F.3d 1381, 1389 n.4 (1st Cir. 1995).

Therefore, if the Court has personal jurisdiction over Steverson and Rudolph, with respect to acts they performed for clients of R&B, then the Court has jurisdiction over R&B as well. According to the Complaint, Rudolph initiated contact with GBF in Massachusetts to establish a public charity to be administered by GBF on behalf of his client, Britney Spears. Rudolph then traveled to Massachusetts in August of 2000, to the first GBF/Britney Spears Foundation-sponsored camp, and again in August of 2001 to attend another GBF/Britney Spears Foundation event. Steverson similarly contacted GBF in Massachusetts to establish a public charity to be administered by GBF on behalf of his client, Justin Timberlake. Over a period of two years, Steverson communicated with GBF's Massachusetts offices and personnel, both by telephone and by email, several times a week on average with respect to the day-to-day activities of the Spears and Timberlake Foundations at GBF. The complaint further states that Steverson traveled to Boston on at least two occasions to transact business relating to GBF, at which time his actions resulted in harm to GBF. In addition, he maintained a position on GBF's Board of Directors from March of 2000 until January of 2001.

Meanwhile, defendant Biggar was employed by GBF in its Boston office, and subsequently in New York (submitting weekly reports to GBF in Boston), during which time she allegedly breached her fiduciary duty to GBF.

There is no question, based on the above facts, that plaintiffs have met their burden of proof with respect to the statutory requirements of M.G.L. c. 223A, § 3(a), transacting business in the Commonwealth and (c), causing tortious injury by an act or omission in the Commonwealth. As the First Circuit continually demonstrates, "[t]he literal requirements of subsection 3(c) are easily satisfied." Landmark Bank v. Machera, 736 F. Supp. 375, 383(D. Mass. 1990). In Ealing Corp. v. Harrods Ltd., 790 F.2d 978, 983 (1st Cir.1986), the Court held that the mere sending of a telex by a British defendant to a Massachusetts plaintiff was sufficient to satisfy subsection 3(a). Similarly, mailing four letters and making one phone call satisfied the requirements. Bond Leather, 764 F.2d at 932; see also Hahn v. Vermont Law School, 698 F.2d 48, 50 (1st Cir. 1983)(mailing of law school application sufficed to subject law school to Massachusetts jurisdiction); Nova Biomedical Corp. v. Moller, 629 F.2d 190, 193-94 (1st Cir. 1980)(mailing two letters enough to confer personal jurisdiction over defendant). The requirements of subsection 3(c) are no more demanding. See Ealing, 790 F.2d at 982 (one telex suffices); North American Video Corp. v. Leon, 480 F. Supp. 213, 217-18 (D. Mass. 1979)(telephone calls suffice). Comparatively, the instant case is a legal slam dunk under the statutory prong of the personal jurisdiction inquiry.

So too does this case pass muster under traditional notions of fair play and substantial justice, as required by the Due Process Clause of the Constitution. As the Supreme Court stated in Burger King Corp. v. Rudzewicz, 471 U.S. 462 (1985), due

process is satisfied if the "defendant has 'purposefully directed' his activities at residents of the forum . . . and the litigation results from alleged injuries that 'arise out of or relate to' those activities." Id. at 472. Unlike Sawtelle, 70 F.3d at 1389-90, where defendant's letter and phone calls to the forum states, while "unquestionably a contact for the purposes of [the court's] analysis," were not *related* contacts sufficient to withstand scrutiny under Burger King, the contacts at issue here are directly related to GBF's alleged injuries. As detailed in the Complaint, Steverson and Rudolph both initiated contacts with GBF in contemplation of a long-term business relationship. In furtherance of this relationship, they both made telephone calls and actual visits to the state. It was during these phone calls and visits that the relationship began to unravel, allegedly culminating in the exploitation of GBF by the defendants. During much of this time, Steverson was a member of the GBF board of directors. Biggars was an employee with GBF in Boston, and later in New York. The claims against Steverson and Biggars arose out of their ties with GBF in Boston, as director and employee, respectively. Defendants, therefore, not only purposefully availed themselves of the benefits of conducting business in Massachusetts, but could have reasonably been expected to be hailed into our courts as well. Finally, exercise of personal jurisdiction over all defendants is fundamentally reasonable under the factors set forth in Ticketmaster-N.Y., Inc. v. Alioto, 26 F.3d 201, 203 (1st Cir. 1994).

Defendant's second contention, that GBF has failed to state a claim upon which relief may be granted, is equally flawed. Indeed, the detailed complaint more than sufficiently sets forth facts, which, if taken in the light most favorable to plaintiff, form the basis for a claim under the meager pleading requirements of Rule 12(b)(6).

Accordingly, defendants' motion to dismiss is denied as to all counts.

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DATE RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE